

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

KUANG-BAO PAUL OU-YOUNG,

Plaintiff,

v.

COUNTY OF SANTA CLARA, et al.,

Defendants.

Case No. 21-cv-07361-BLF

**ORDER ADDRESSING ADDITION OF
THE UNDERSIGNED AS A
DEFENDANT; DISMISSING CERTAIN
DEFENDANTS NAMED IN THE FIRST
AMENDED COMPLAINT; AND
EXTENDING COUNTY
DEFENDANTS' DEADLINE TO
RESPOND TO FIRST AMENDED
COMPLAINT**

[Re: ECF 21, 22]

In this order, the Court: (1) addresses Plaintiff's addition of the undersigned as a defendant in the first amended complaint ("FAC"); (2) dismisses certain defendants; and (3) extends the County Defendants' deadline to respond to the FAC.

I. BACKGROUND

Plaintiff Kuang-Bao Paul Ou-Young has been declared a vexatious litigant and is subject to two pre-filing review orders. As relevant here, the second pre-filing review order requires Plaintiff to "obtain leave of court before filing any complaint that alleges claims against federal judges, including United States Supreme Court justices, federal circuit judges, federal district judges, federal magistrate judges, and federal bankruptcy judges." *See* ECF 26 in Case No. 19-cv-07000-BLF.

Plaintiff filed the original complaint in this action on September 22, 2021, after a judicial determination that the complaint did not assert claims against federal judges or otherwise within the scope of the applicable pre-filing review orders. *See* Order Authorizing Filing of Compl., ECF 1; Compl., ECF 2. On January 25, 2022, this Court dismissed all unserved defendants. *See* Order, ECF 17. The five defendants who had been served – the County of Santa Clara and related individuals (“County Defendants”) – filed a motion to dismiss the complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). *See* Mot. to Dismiss, ECF 19. Plaintiff responded by filing a FAC as of right, adding dozens of new claims and hundreds of new defendants. *See* FAC, ECF 21. Among the newly-added defendants are the undersigned and more than 100 other federal judges. *See id.* The FAC also reasserts claims against defendants that this Court dismissed without leave to amend for failure to effect service of process. *See id.*

Upon the filing of the FAC, the undersigned terminated as moot the County Defendants’ motion to dismiss the original complaint. *See* Order Terminating Motion, ECF 23. The County Defendants filed an administrative motion to stay their deadline to respond to the FAC pending pre-filing review of the FAC. *See* Admin. Mot. to Stay, ECF 22. Plaintiff filed opposition to the administrative motion to stay. *See* Pl.’s Opp., ECF 25.

II. RECUSAL IS NOT WARRANTED

Because Plaintiff has named the undersigned as a defendant in the FAC, the Court must consider whether recusal is warranted. Pursuant to 28 U.S.C. § 455, “[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a). Section 455 enumerates several circumstances requiring recusal, including where the judge “has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.” 28 U.S.C. § 455(b)(1). “[T]he provisions of § 455(a) & (b)(1) require recusal only if the bias or prejudice stems from an extrajudicial source and not from conduct or rulings made during the course of the proceeding.” *Toth v. Trans World Airlines, Inc.*, 862 F.2d 1381, 1388 (9th Cir. 1988). “[I]n the absence of a legitimate reason to recuse himself, a judge should participate in cases assigned.” *United States v. Holland*, 519 F.3d 909, 912 (9th Cir. 2008)

(internal quotation marks and citation omitted).

In the FAC, Plaintiff alleges that the undersigned violated Plaintiff's civil rights by issuing a pre-filing review order and by dismissing pleadings in Plaintiff's prior lawsuits. *See* FAC ¶¶ c17, c21, c25, c28, c53, c58, c59. Because Plaintiff's claims arise from conduct and rulings made in the course of Plaintiffs' legal proceedings, and not from any extrajudicial source, the claims do not warrant recusal of the undersigned.

III. FEDERAL JUDGES AND PREVIOUSLY DISMISSED DEFENDANTS

A. Federal Judges

It appears that Plaintiff has attempted to end-run the applicable pre-filing review orders by amending his complaint to add federal judges only after his original complaint was approved for filing. "But plaintiff cannot render the court's pre-filing order nugatory with such gamesmanship." *Bruzzone v. McManis*, No. 18-CV-01235-PJH, 2018 WL 1730663, at *1 (N.D. Cal. Apr. 10, 2018). Accordingly, this Court will screen Plaintiff's FAC in accordance with the pre-filing review orders. *See id.* (screening amended pleading that added a new party within the scope of applicable pre-filing review order); *see also Moye v. Rest. Depot*, No. C 19-80004 WHA, 2019 WL 1454118, at *2 (N.D. Cal. Apr. 2, 2019) (screening amended pleading pursuant to pre-filing review order).

The FAC adds claims against 108 individuals that Plaintiff identifies as federal judges, implicating the pre-filing review order discussed above. *See* FAC ¶¶ a25-a41, a48-a130, a135-a142 (identifying federal judges). The FAC fails to state a potentially cognizable claim against any of those individuals. Judges generally are absolutely immune from civil suit. *See Mireles v. Waco*, 502 U.S. 9, 9 (1991) ("[G]enerally, a judge is immune from a suit for money damages."); *Atkinson-Baker & Assocs., Inc. v. Kolts*, 7 F.3d 1452, 1454 (9th Cir. 1993) ("Federal judges are absolutely immune from claims for declaratory and injunctive relief arising from their judicial acts."). "[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages." *Mireles*, 502 U.S. at 11.

"[J]udicial immunity is not overcome by allegations of bad faith or malice, the existence of which ordinarily cannot be resolved without engaging in discovery and eventual trial." *Mireles*,

502 U.S. at 11. “[I]mmunity is overcome in only two sets of circumstances.” *Id.* “First, a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not taken in the judge’s judicial capacity.” *Id.* “Second, a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction.” *Id.*

Plaintiff’s claims against the individuals identified as federal judges in the FAC are based upon judicial acts, such as issuing or applying pre-filing review orders, dismissing Plaintiff’s pleadings and lawsuits, denying his appeals, and the like. Federal judges have absolute judicial immunity for those actions. Accordingly, the following individual defendants identified as federal judges in the FAC are DISMISSED WITHOUT LEAVE TO AMEND:

Richard G. Seeborg

Phyllis J. Hamilton

Lucy H. Koh

Edward M. Chen

Beth Labson Freeman

William H. Orrick

Claudia A. Wilken

Yvonne Gonzalez Rogers

Susan Y. Illston

Jeffrey S. White

Vince G. Chhabria

William H. Alsup

James Donato

Virginia K. DeMarchi

Alex G. Tse

Nathanael M. Cousins

Laurel Beeler

Sarah Evans Barker

D. Brock Hornby

United States District Court
Northern District of California

1	Ralph R. Beistline
2	George H. King
3	Anthony W. Ishii
4	Stephen M. McNamee
5	Philip S. Gutierrez
6	Brian M. Morris
7	Miranda M. Du
8	Ronald S. W. Lew
9	Stefan R. Underhill
10	Freda L. Wolfson
11	John P. Bailey
12	S. Maurice Hicks, Jr.
13	Sara E. Lioi
14	Jon E. DeGuilio
15	John R. Tunheim
16	Leslie E. Kobayashi
17	Claire V. Eagan
18	L. Scott Coogler
19	Beryl A. Howell
20	Mary H. Murguia
21	Sidney R. Thomas
22	Mary M. Schroeder
23	Barry G. Silverman
24	Richard A. Paez
25	Danielle J. Forrest
26	Paul J. Watford
27	Mark J. Bennett
28	Lawrence VanDyke

United States District Court
Northern District of California

1	N. Randy Smith
2	Morgan Christen
3	Sandra S. Ikuta
4	Michelle T. Friedland
5	Alex Kozinski
6	J. Clifford Wallace
7	Richard C. Tallman
8	Richard R. Clifton
9	Alfred T. Goodwin
10	Dorothy W. Nelson
11	William C. Canby, Jr.
12	Diarmuid F. O'Scannlain
13	Edward Leavy
14	Stephen Trott
15	Ferdinand F. Fernandez
16	Andrew J. Kleinfeld
17	Michael Daly Hawkins
18	Wallace Tashima
19	Susan P. Graber
20	M. Margaret McKeown
21	Kim McLane Wardlaw
22	William A. Fletcher
23	Ronald M. Gould
24	Marsha S. Berzon
25	Johnnie B. Rawlinson
26	Jay S. Bybee
27	Consuelo M. Callahan
28	Carlos T. Bea

United States District Court
Northern District of California

1	Milan D. Smith, Jr.
2	Jacqueline H. Nguyen
3	Andrew D. Hurwitz
4	John B. Owens
5	Ryan D. Nelson
6	Eric D. Miller
7	Bridget S. Bade
8	Daniel P. Collins
9	Kenneth Kiyul Lee
10	Daniel A. Bress
11	Patrick J. Bumatay
12	Jeffrey R. Howard
13	Debra A. Livingston
14	Michael A. Chagares
15	Roger L. Gregory
16	Priscilla R. Owen
17	Jeffrey S. Sutton
18	Diane S. Sykes
19	Lavenski R. Smith
20	Timothy M. Tymkovich
21	William H. Pryor, Jr.
22	Srikanth Srinivasan
23	Kimberly A. Moore
24	Pasco M. Bowman
25	J. Harvie Wilkinson III
26	John G. Roberts, Jr.
27	Anthony M. Kennedy
28	Clarence Thomas

1 Stephen G. Breyer

2 Ruth Bader Ginsburg¹

3 Samuel A. Alito, Jr.

4 Sonia Sotomayor

5 Elena Kagan

6
7 **B. Previously Dismissed Defendants**

8 The FAC reasserts claims against defendants that the Court has dismissed from this suit for
9 failure to effect service of process. Plaintiff did not obtain leave of court to reassert claims against
10 those defendants, who once again are dismissed. The following defendants are DISMISSED
11 WITHOUT LEAVE TO AMEND:

12 John Chase

13 Jeanette Tonini

14 Karl Sandoval

15 Karan Dhadialla

16 Jose Martinez

17
18 **IV. COUNTY DEFENDANTS' DEADLINE TO RESPOND TO FAC**

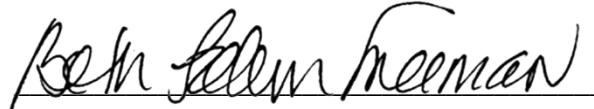
19 On March 3, 2022, the County Defendants filed an administrative motion to stay their
20 deadline to respond to the FAC pending pre-filing review of the FAC. *See* Admin. Mot. to Stay,
21 ECF 22. Plaintiff filed opposition to the administrative motion to stay. *See* Pl.'s Opp., ECF 25.
22 The administrative motion is MOOT in light of the Court's screening of the FAC herein. The
23 County Defendants' deadline to respond to the FAC is EXTENDED to March 28, 2022, which is
24 fourteen days after the issuance of this order.

25
26
27 ¹ The Court observes that Justice Ruth Bader Ginsberg is deceased.

V. SERVICE OF REMAINING DEFENDANTS

Federal Rule of Civil Procedure 4(m) requires service of the summons and complaint on all parties within 90 days after the complaint is filed. Plaintiff shall comply with Rule 4(m). Failure to do so will result in dismissal of all unserved defendants without further notice by the Court.

Dated: March 15, 2022


BETH LABSON FREEMAN
United States District Judge